

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>Proceeding under Sections 104,</b>
<b>Brown's Dump Site</b>	)	<b>122(a) and 122(d)(3) of the</b>
	)	<b>Comprehensive Environmental</b>
	)	<b>Response, Compensation</b>
	)	<b>and Liability Act of 1980,</b>
	)	<b>as amended, 42 U.S.C.</b>
	)	<b>§§ 9604 and 9622.</b>
	)	
<b>Respondents</b>	)	
	)	<b>EPA Docket No.: 99-30-C</b>
<b>City of Jacksonville, Florida</b>	)	
	)	
<b>Duval County School Board</b>	)	
	)	
<b>JEA</b>	)	

**ADMINISTRATIVE ORDER BY CONSENT  
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

**I JURISDICTION**

This Administrative Order by Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with the City of Jacksonville, Florida, the Duval County School Board, and the JEA (Respondents), pursuant to the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9604, 9622(a) and 9622(d)(3). This authority was delegated by the President to the Administrator of the EPA by Exec Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of Region IV EPA and redelegated to the Director of the Waste Management Division.

Respondents agree to undertake all actions required of them by the terms and conditions of this Consent Order for the conduct and implementation of the Remedial Investigation and Feasibility Study (RI/FS). The Respondents consent to and will not contest EPA jurisdiction regarding this Order.

## II. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and the Respondents, their agents, successors, assigns, officers, directors, and principals. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondents shall alter their responsibilities under this Consent Order.

The Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants who are retained to conduct any work performed under this Consent Order, and lessees of the properties within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, and agents comply with this Consent Order.

## III. DISCLAIMER

By signing this Consent Order and taking actions under this Order, the Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondents in this Order shall not be considered an admission of liability and is not admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, the Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

## IV. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are: (A) with respect to the Remedial Investigation (RI), to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site into the environment; and (B) with respect to the Feasibility Study (FS), to develop and evaluate alternatives for remedial action to prevent, mitigate, or otherwise respond to the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site; and (C) to recover response and oversight costs incurred by EPA with respect to this consent order.

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq., and will be subject to the express EPA approvals as set forth below.

## V. FINDINGS OF FACTS

The following constitutes an outline of the facts upon which this Consent Order is based:

A. The Brown's Dump facility is an approximately 50-acre area located north of West 33<sup>rd</sup> Street, west of Pearce Street, and south and east of Moncrief Creek in Jacksonville, Duval County, Florida (hereinafter referred to as "the Site" or "the Brown's Dump Site"). Within those 50 acres is an elementary school operated by the Duval County School Board, which occupies 14 acres, a JEA electrical substation, and several single or multi-family residences. From 1949 to 1953, this Site was an operating landfill that was used to deposit ash from the City of Jacksonville's municipal solid waste incinerator. Additionally, when the incinerator was not operating, municipal waste was brought directly to the property.

B. In the Jacksonville area, Quaternary surficial deposits are underlain by upper Miocene- or Pliocene-age tan or light grey sediments, which are composed of sand, shell, and porous bioclastic and cavernous limestone. The limestone is often interbedded by thin beds of brown, crystalline, and dolomitic limestone. This limestone aquifer is commonly 40 to 100 feet below ground surface in Duval County and is the main water-bearing zone in the surficial aquifer system. The limestone aquifer is semi-confined because it is overlain by lower-permeability sediments.

The Quaternary surficial deposits and upper Miocene- and Pliocene-age deposits are underlain by 250 to 500 feet of phosphatic carbonates, clay, silt, fine-grained, and shelly, crushed rock of the Hawthorn Group. Although some wells tap the more permeable sand and limestone layers of the Hawthorn Group, it is not generally considered a good source of water. The low permeability silty clay and clay sediments of the Hawthorn Group act as a semi-confining unit to the underlying Floridan aquifer, which is the principal source of fresh water in the area.

C. According to the November 1995 Contaminant Assessment Report and the March 6, 1998, Expanded Site Inspection Report, incinerator ash deposits at the Brown's Dump Site are located from the surface to a depth of 22 feet in some areas of the Mary McLeod Bethune Elementary School property. Hazardous substances that are found on the school property above Florida direct soil exposure levels include but are not limited to lead (753 to 2530 parts per million (ppm)), arsenic (15 and 35 ppm), PCBs (1.4 ppm), and dioxin (0.013 to 0.062 parts per billion (ppb)). Lead levels above Florida direct soil exposure levels within the ash in the residential area range from 779 ppm to 78,800 ppm. Hazardous substances above Florida groundwater drinking standards include but are not limited to arsenic (20 ppm), barium (75, 120, and 230 ppm), cadmium (5 ppm), lead (29, 64 and 73 ppm), and zinc (110, 330, and 910 ppm). Sediment samples from Moncrief Creek contain cadmium (3.7 ppm), copper (190 ppm), lead (760 estimated value (JN) ppm), mercury (0.62 ppm), nickel (25 ppm), and zinc (810 ppm) above the EPA sediment screening standards for ecotoxicity.

Hazardous substances in Moncrief Creek above Florida surface water criteria include arsenic (11, 12, and 16 ppm), lead (3, 3, and 4 ppm), and zinc (20, 22, 24, and 100 ppm).

D. The elevated levels of hazardous substances in the surficial soils of the school and residential areas allow for a soil ingestion pathway for residents and children at the school property. Although Moncrief Creek is not used for drinking water, the elevated hazardous substances in the creek sediment indicates a possible ecological toxicity risk. Hazardous substances have been detected above Florida groundwater drinking standards from monitoring wells at the property.

E. From 1949 to 1953, the City of Jacksonville operated a landfill that was used to deposit ash and municipal waste at the Site; thus, the City of Jacksonville is liable as a past operator. Additionally, the City of Jacksonville is liable as a past owner of the Site, as it purchased the portion of the Site where the present JEA electrical substation stands. The Duval County School Board is liable as a present owner of the Site, as it currently owns and operates the Bethune Elementary School that is located within the Site. The JEA is liable as a current owner of the Site, as it owns the portion of property wherein its electrical substation is located.

## VI. CONCLUSIONS OF LAW

A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. The Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. Contaminants found at the Site as described in Section V above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute a pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

E. The hazardous substances described have been released into the environment and its potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

## VII. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may

present an imminent and substantial endangerment to the public health or welfare or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.

C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Consent Order, if performed according to the terms of this Order, will be done properly and promptly by the Respondents. EPA has also determined that the Respondents are qualified to conduct such work.

### VIII. WORK TO BE PERFORMED

All aspects of the Work to be performed by Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup, the selection of which shall be subject to approval by EPA. Within ninety (90) days after the effective date of this Consent Order, Respondents shall submit to EPA in writing the name, title, and qualifications of any supervising contractor proposed to be used in carrying out the RI/FS to be performed pursuant to this Consent Order. EPA shall notify the Respondents of its approval or disapproval in writing, within twenty (20) calendar days of its receipt of this submission by the Respondents.

If EPA disapproves of the selection of any contractor, Respondents shall submit a list of alternate contractors to EPA within fifteen (15) days of receipt of EPA's disapproval of the contractor previously selected. EPA shall, within twenty (20) calendar days of receipt of the list, provide written notice of the names of the contractors that it approves. The Respondents may at their election select any one from that list. Respondents shall notify EPA of the name of the contractor selected within fifteen (15) calendar days of EPA's notice of the approved contractors.

If, at any time thereafter, Respondents propose to change any contractor, Respondents shall give written notice to EPA and shall obtain approval from EPA before the new contractor performs any work under this Consent Order.

Based on the foregoing, it is hereby **AGREED TO AND ORDERED** that the following work will be performed:

A. Within one hundred fifty (150) calendar days of the effective date of this Consent Order, Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). The RI/FS Work Plan shall be developed and submitted in conjunction with a Sampling and Analysis Plan and a Health and Safety Plan, although each plan may be delivered under separate cover. These plans shall be developed in accordance with the National Contingency Plan and the attached Scope of Work (SOW) (Attachment 1), which is hereby made a part of this Consent Order as if fully set forth herein. The RI/FS Work Plan shall include a comprehensive description of the work to be performed, the media to be investigated (i.e., air, groundwater, surface

water, surface and subsurface soils, and sediments, etc.), the methodologies to be utilized, and the rationale for the selection of each methodology. A comprehensive schedule for completion of each major activity required by this Consent Order and including the submission of each deliverable listed in the RI/FS Scope of Work shall also be included. Such schedule shall reflect submittal of the Draft Feasibility Study within 500 calendar days of the effective date of this Consent Order. Provided, however, that the RPM has the discretion to extend in writing the deadline for deliverables, and any such written modification will become part of this Consent Order.

The Sampling and Analysis Plan (SAP) shall include procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data generated will meet the Data Quality Objectives (DQOs) established. The SAP provides a mechanism for planning field activities and consists of a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP shall define in detail the sampling and data-gathering methods that shall be used on the project. It shall include sample objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that shall be used to achieve the desired DQOs.

A Health and Safety Plan shall be prepared in conformance with the Respondents' health and safety program and OSHA regulations and protocols.

B. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondents must prepare a plan (hereinafter referred to as the Technical Assistance Plan) for providing and administering up to \$50,000.00 of Respondents' funds to be used by selected representatives of the community for the purpose of providing technical assistance during the response activities conducted pursuant to this Consent Order at this Site.

C. EPA will perform the Baseline Risk Assessment. Respondents shall support EPA in the effort by providing various information to EPA as outlined above. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

EPA will provide, after review of the Respondents' site characterization summary, sufficient information concerning the risks such that Respondents can begin drafting the Feasibility Study (FS) Report.

EPA will prepare a Baseline Risk Assessment Report based on the data collected by Respondents during the Site Characterization. EPA will release this Report to the public at the same time it releases the final RI Report. Both reports will be put into the administrative record for the Site.

EPA will respond to all significant comments on the Baseline Risk Assessment that are

resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

D. Respondents will implement the RI/FS Work Plan approved by EPA. The EPA approved RI/FS Work Plan and any EPA approved amendments thereto will be attached to and incorporated in this Consent Order as Attachment 2. The RI/FS will be conducted in accordance with the schedule contained in the RI/FS Work Plan as approved by EPA.

E. Within seven (7) calendar days of the approval of the RI/FS Work Plan by EPA, Respondents will commence work on Task 1 of the RI/FS Work Plan.

F. Respondents shall submit to EPA written monthly progress reports which: (1) describe the actions that have been taken toward achieving compliance with this Consent Order during the previous month; (2) include all results of sampling and tests and all other data received by Respondents during the course of the work; (3) include all plans and procedures completed under the Work Plan during the previous month; (4) describe all actions, data, and plans that are scheduled for the next month, and provide other information relating to the progress of the work as deemed necessary by EPA; and (5) include information regarding percentage of completion, unresolved delays, encountered or anticipated, that may affect the future schedule for implementation of the Scope of Work and/or RI/FS Work Plans, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the fifth day of every month following the effective date of this Consent Order.

G. Deliverables, including reports, plans, or other correspondence to be submitted pursuant to this Consent Order, shall be sent by regular certified mail, express mail, or overnight delivery to the following addresses or to such other addresses as the EPA hereafter may designate in writing.

Randa Chichakli  
Remedial Project Manager  
EPA - Region 4  
Waste Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-8928

The number of copies to be submitted to EPA for each deliverable is identified in the RI/FS Scope of Work.

For informational purposes documents, two copies shall be sent to:

Mr. Mike Fitzsimmons  
Department of Environmental Protection  
7825 Baymeadows Way, Suite 200-B

Jacksonville, Florida 32256-7577

Documents to be submitted to the Respondents' Project Coordinator should be sent to:

L. Chris Pearson  
Disposal Operation Manager  
Solid Waste and Resource Management Dept.  
City of Jacksonville  
515 North Laura Street  
Jacksonville, Florida 32202

H. The 500-day submittal of the Draft Feasibility Study in Section VIII is based upon a general EPA review time of 45 days for each deliverable. If EPA's review time is greater than 45 days for such a deliverable, Respondents' 500-day time period will be extended by one day for every day that EPA exceeds its 45-day review time for a deliverable.

I. EPA may determine that other tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of a RI/FS in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. The Respondents shall implement any additional tasks which EPA determines are necessary as part of the RI/FS and which are in addition to the tasks detailed in the RI/FS Work Plan. Provided, however, that within ten (10) days of receipt of the EPA request, Respondents shall either (1) provide EPA with a written statement expressing their willingness to perform the additional task(s), or (2) invoke dispute resolution. The additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA, in a written modification to the work plan or written work plan supplement.

#### IX. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. EPA reserves the right to comment on, modify, and direct changes for all deliverables. Upon receipt of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Order, EPA shall either: (1) approve the submission; or (2) disapprove the submission, notifying Respondents of deficiencies. If such submission is disapproved, EPA shall either: (1) notify the Respondents that EPA will modify the submission to cure the deficiencies; or (2) direct the Respondents to modify the submission to cure the deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of the submission, Respondents shall, within thirty (30) days, cure the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission.

C. In the event of approval or modification of the submittal by EPA, Respondents shall



proceed to take any action required by the plan, report, or other item, as approved or modified.

D. If, upon resubmission, the plan, report, or item is not approved, Respondents may be deemed to be in violation of this Consent Order and stipulated penalties shall begin to accrue pursuant to Section XVII of this Consent Order. EPA retains the right to seek stipulated or statutory penalties, to require the amendment of the document, to perform additional studies, to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take any other action, including, but not limited to, enforcement action to recover its costs pursuant to its authority under CERCLA.

E. Neither failure of EPA to expressly approve or disapprove of Respondents' deliverables within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Respondents are responsible for preparing and submitting deliverables acceptable to EPA.

F. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to the discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. In consultation with Respondents, meetings will be scheduled at EPA's discretion.

G. The provisions of this Consent Order shall govern all proceedings regarding the RI/FS work conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondents, the inconsistency will be resolved in favor of this Consent Order.

#### X. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA and Respondents will each designate a Project Coordinator and an Alternate Project Coordinator. The "Project Coordinator" for EPA will be the Remedial Project Manager (RPM) or the On-Scene Coordinator (OSC) responsible for this Site. The Respondents' Project Coordinator shall not be an attorney for any of the Respondents in this matter. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondents and EPA, including all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, will be directed through the Project Coordinators.

B. EPA and Respondents each have the right to change their respective Project Coordinator. Such a change will be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

C. The EPA designated Project Coordinator will have the authority vested in an RPM or OSC by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the

authority to halt, conduct, or direct any work required by this Consent Order, or any response actions or portions thereof when he or she determines that conditions may present an immediate risk to public health or welfare or the environment.

D. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

E. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

#### XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAMS-005/80) and the "EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual" (U.S. EPA Region IV, Environmental Services Division, February 1, 1991), and subsequent amendments to such guidelines. Prior to the commencement of any monitoring project under this Consent Order, Respondents shall submit for review, modification, and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under Section XV of this Consent Order. Respondents shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondents in implementing this Consent Order.

B. Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this Consent Order and shall submit these results in monthly progress reports as described in Section VIII.F. of this Consent Order.

C. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA, and/or its authorized representative, of any samples collected by Respondents pursuant to the implementation of this Consent Order. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. EPA, however, waives notice if Respondents adhere to a sampling schedule submitted at least fourteen (14) days in advance of the first sampling event. Provided, however, that the Respondents shall notify EPA at least fourteen (14) days in advance of any modifications to the submitted sampling schedule. In addition, EPA shall have the right to collect any additional samples that EPA deems necessary.

D. Respondents shall ensure that the laboratory utilized by Respondents for analyses participates in a EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require

submittal of data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP), and may require laboratory analysis of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Consent Order, EPA hereby retains all of its information gathering, inspection, and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statute or regulation.

## XII. ACCESS

A. From the date of execution of this Consent Order until EPA provides written notice of satisfaction of the terms of the Order, EPA and its authorized representatives and agents shall have access at all times to the Site and any facility to which access is required for the implementation of this Consent Order, to the extent access to the facility is controlled by or available to Respondents, for the purposes of conducting any activity authorized by or related to this Consent Order, including, but not limited to:

1. Monitoring the RI/FS work or any other activities taking place on the facility;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Evaluating the need for or planning and implementing additional remedial or response actions at or near the Site; and
6. Inspecting and copying records, operating logs, contracts, or other documents required to assess Respondents' compliance with this Consent Order.

B. To the extent that the Site or any other area where work is to be performed under this Consent Order is owned or controlled by persons other than Respondents, Respondents shall use their best efforts<sup>1</sup> to secure from such persons an agreement to provide access for Respondents, as well as for EPA and authorized representatives or agents of EPA, as necessary to effectuate this Consent Order. Copies of such access agreements will be provided to EPA prior to Respondents' initiation of field activities. If access is not obtained within thirty (30) days before entry onto the property is necessary to begin work according to the approved schedule, Respondents shall promptly notify EPA.

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<sup>1</sup> "Best efforts," for purposes of this Section, includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements.

The United States may thereafter assist Respondents in obtaining access. Respondents shall, in accordance with Section XVIII herein, reimburse the United States for all costs incurred by it in obtaining access, including but not limited to, attorneys' fees and the amount of just compensation and costs incurred by the United States in obtaining access. However, EPA will notify Respondents before agreeing to compensate anyone for access and before instituting administrative or judicial proceedings to compel access.

C. Notwithstanding any provision of this Consent Order, EPA retains all of its access authorities and rights under CERCLA, RCRA, and any other applicable statute or regulations.

### XIII. CONFIDENTIALITY OF SUBMISSIONS

A. Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents.

B. Respondents waive any objection to the admissibility into evidence (without waiving any objection as to weight) of the results of any analyses of sampling conducted by or for them at the Site or of other data gathered pursuant to this Consent Order that has been verified by the quality assurance/quality control procedures established pursuant to Section XI.

### XIV. RECORD PRESERVATION

EPA and Respondents agree that each will preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six year period, Respondents will notify EPA within ninety (90) calendar days prior to the destruction of any such documents. Upon request by EPA, Respondents will make available to EPA such records or copies of any such records. Additionally, if EPA requests that documents be preserved for a longer period of time, Respondents will comply with that request or deliver to EPA any previously undelivered documents. Thereafter, EPA will be solely responsible for preserving the documents.

### XV. DISPUTE RESOLUTION

Any disputes arising under this Consent Order shall be resolved as follows: If the Respondents object to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondents

shall notify EPA's Project Coordinator in writing of their objections within 14 calendar days after receipt of the decision. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an additional fourteen (14) calendar days to reach agreement. If agreement cannot be reached within this fourteen (14) calendar day period, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondents. The Division Director's determination is EPA's final decision. If Respondents do not agree to perform or do not actually perform the task in dispute as determined by EPA's Division Director, EPA reserves the right to conduct the work itself, seek reimbursement from the Respondents, and/or seek other appropriate relief.

The invocation of the dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Respondents under this Consent Order, not directly in dispute, unless EPA agrees otherwise.

## XVI. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Consent Order as an event arising from causes entirely beyond the control of Respondents and of any entity controlled by Respondents, including their contractors and subcontractors, that could not have been overcome by due diligence that delays or prevents the performance of any obligation under this Consent Order. Examples of events which may constitute force majeure events include, but are not limited to, extraordinary weather events, (including hurricanes and tropical storms), natural disasters, and national emergencies. Examples of events that are not force majeure events include, but are not limited to, normal inclement weather, increased costs or expenses of the Work to be performed under this Consent Order, the financial difficulty of Respondents to perform such tasks, the failure of one or more of Respondents to satisfy their obligation under this Consent Order, acts or omissions not otherwise force majeure attributable to Respondents' contractors or representatives, and the failure of Respondents or Respondents' contractors or representatives to make complete and timely application for any required approval or permit.

B. When circumstances occur which may delay or prevent the completion of any phase of the Work Plan or access to the Site or to any facility on which part of the Work Plan is to be performed, whether or not caused by a force majeure event, Respondents shall notify the EPA Project Coordinator orally of the circumstances within forty-eight (48) hours of when Respondents first knew or should have known that the event might cause delay. If the EPA Project Coordinator is unavailable, Respondents shall notify the designated alternate or the Director of the Waste Management Division, EPA Region 4. Within seven (7) calendar days after Respondents first became aware of such circumstances, Respondents shall supply to EPA in writing: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and (5) a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment.

Respondents shall exercise their best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

C. If EPA agrees that a delay is or was caused by a force majeure event, the time for performance of the obligations under this Consent Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXIV, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not necessarily, but may, justify an extension of time for performance of any subsequent obligation, such as sequenced submissions.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XV of the Consent Order. In any such proceedings, to qualify for a force majeure defense, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay was or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that the Respondents did exercise or are exercising their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph B of this Section. Should Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of the Consent Order.

## XVII. STIPULATED PENALTIES

Unless excused under the provisions of Sections XV or XVI, the Respondents shall pay into the Hazardous Substance Superfund administered by EPA, the sums set forth below as stipulated penalties.

Stipulated penalties shall accrue as follows:

A. For each day during which Respondents fail to perform, in accordance with the schedules contained in this Consent Order and in the various plans and reports required under this Consent Order incorporated by reference herein, any of the following activities:

1. for failure to timely submit the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report, and draft FS Report required under this Consent Order;
2. for failure to timely submit any modifications requested by EPA or its representatives to the RI/FS Work Plan, Sampling and Analysis Plan, draft RI Report, and draft FS Report as required under this Consent Order; and
3. for failure to timely submit payment of oversight costs as provided in Section XVIII.

Respondents shall be liable to EPA for stipulated penalties in the following amounts:

Period of Failure to Comply      Penalty Per Violation Per Day

1st through 14th calendar day	\$1,000
15th through 44th calendar day	\$1,750
45th calendar day and beyond	\$2,500

B. If Respondents fail to submit a monthly progress report by its due date, Respondents shall be liable to EPA for stipulated penalties in the amount of \$300 per violation for each calendar day during which Respondents fail to submit and, if necessary, modify monthly reports.

C. Respondents shall be liable to EPA for stipulated penalties in the amount of \$300 per violation for each calendar day during which Respondents fail to comply with all other requirements of this Consent Order including, but not limited to, any implementation schedule, payment requirement, notification requirement, or completion deadline.

All stipulated penalties begin to accrue on the day the violation occurs or on the day following Respondents' failure to comply with any schedule or deadline or the terms, conditions, or requirements contained in this Consent Order and/or Work Plan. Stipulated penalties shall continue to accrue through the final day of the correction of the noncompliance or the completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section IX during the period, if any, beginning on the 46<sup>th</sup> day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (2) with respect to a decision by the EPA Waste Management Division Director under Section XV, during the period, if any, beginning on the 31st day after the initial 28-day dispute resolution period until the date that the Director issues a final determination regarding such dispute.

Payment of stipulated penalties shall be due and owing within thirty (30) days from the receipt of a written notice from EPA notifying Respondents that penalties have been assessed. Interest shall accrue on any unpaid amounts, beginning at the end of the fifteen day period, at the rate established by the Department of Treasury under 31 U.S.C. § 3717. Respondents shall pay a handling charge of one percent to be assessed at the end of each 31 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. The check and transmitted letter shall identify the Name of the Site, the Site identification number, and the title of this Order. A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Payment shall be made to:

U. S. Environmental Protection Agency  
Region 4  
Superfund Accounting

P. O. Box 100142  
Atlanta, Georgia 30384  
ATTENTION: (Collection Officer for Superfund)

Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV of this Order. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions that may be available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Consent Order. Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States. EPA will assess only one stipulated penalty per violation against the Respondents, and will not multiply each penalty per violation by the number of Respondents.

#### XVIII. REIMBURSEMENT OF OVERSIGHT AND RESPONSE COSTS

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. § 9604(a)(1), Respondents agree to reimburse the Hazardous Substance Superfund for all response and oversight costs incurred by EPA or its authorized representatives in oversight of Respondents' performance of work under the Consent Order.

At the end of each fiscal year, EPA will submit to Respondents an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall include all direct and indirect costs of EPA's oversight arrangement for the RI/FS, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, the costs of redoing any of Respondents tasks, and any assessed interest.



EPA's Agency Financial Management System summary data (SCORES Reports) and any other necessary documents, shall serve as the basis for payment demands.

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. Respondents shall, within thirty (30) calendar days of receipt of each accounting, remit a certified or cashiers check for the amount of those costs made payable to the Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from that date. Checks should specifically reference the identity of the Site and should be sent to:

U. S. Environmental Protection Agency  
Region 4  
Superfund Accounting  
P. O. Box 100142  
Atlanta, Georgia 30384  
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set out above. Respondents bear the burden of establishing an EPA accounting error and the inclusion of costs outside the scope of this Consent Order by a preponderance of the evidence.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA to enforce the response and oversight cost reimbursement requirements of this Consent Order and to collect stipulated penalties assessed pursuant to Section XVII of this Consent Order.

#### XIX. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, the Respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA regarding this Site. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Except as otherwise provided herein, EPA and Respondents expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by Respondents and to require that Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondents decline to perform any additional or modified tasks, EPA will have the right to undertake any RI/FS work. In addition, EPA reserves the

right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondents thereafter for such costs which are incurred by the United States, and Respondents reserve all rights to contest or defend against such claims or actions.

Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved their liability to EPA for the performance of the RI/FS that is the subject of this Order. The Respondents are not released from liability, if any, for any actions taken beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action (RD/RA), or activities arising pursuant to Section 121(c) of CERCLA.

## XX. OTHER CLAIMS

Nothing in this Consent Order constitutes a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondents, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this Site.

This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

In entering into this Consent Order, Respondents waive any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Order.

Respondents shall bear their own costs and attorney fees.

## XXI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order will be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order, or made a part of this Consent Order by being incorporated herein at some later date. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the work). Where any portion of the work

that is not on-site requires a federal, state, or local permit or approval, the Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

## XXII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Subject to the applicable limitations of Section 768.28, Fla. Stat., Respondents agree to indemnify and save and hold harmless the United States, its agencies, departments, officials, agents, employees, contractors, or representative, from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. The United States Government or any agency or authorized representative thereof shall not be held to be a party to any contract involving Respondents at or relating to the Site.

## XXIII. PUBLIC COMMENT

Upon submittal to EPA of the Feasibility Study Final Report, EPA will make both the Remedial Investigation Final Report and the Feasibility Study Final Report and EPA's Proposed Plan available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Plan and the NCP. Following the public review and comment period, EPA will notify Respondents of the remedial action alternative selected for the Site.

## XXIV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondents and EPA prior to the issuance of this Consent Order concerning its terms, Respondents agree that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date on which it is signed by EPA. This Consent Order may be amended by mutual agreement of EPA and Respondents. Such amendments will be in writing and will have, as the effective date, that date on which such amendments are signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Consent Order.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order and will subject the Respondents to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XVI and XVII) of this Consent Order.

No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as

relieving Respondents of their obligation to obtain such formal approval of EPA as may be required by this Consent Order.

#### XXV. NOTICE TO THE STATE

EPA has notified the State of Florida regarding the requirements of this Consent Order, and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by this Order.

Upon completion of the RI/FS, pursuant to the requirements of Section 104(c)(2) of CERCLA, 42 U.S.C. § 9604(c)(2), EPA will notify the State of Florida before determining the appropriate remedial action to be taken at the Site.

#### XXVI. TERMINATION AND SATISFACTION


This Consent Order shall terminate when the Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with Sections XIV, XVIII, and XIX of this Consent Order.

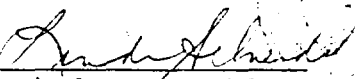
The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

**Brown's Dump Site**


IT IS SO AGREED:

**City of Jacksonville, Florida**


BY:  8-31-99  
John A. Delaney  
Mayor Date

ATTEST:   
Linda Schneider  
Acting Corporation Secretary

Form Approved:

  
Gregory K. Radlinski  
Chief, Environmental Law Div.

IT IS SO AGREED AND ORDERED:

BY:  9/1/99  
Curt Fehn  
Chief, South Site Branch  
Waste Management Division  
Region 4  
U.S. Environmental Protection Agency Date

IT IS SO AGREED:

**Duval County Public Schools**

By: Linda S. Sparks  
Linda S. Sparks, Chairman

8-31-99  
Date

By: John C. Fryer, Jr.  
John C. Fryer, Jr., Superintendent

APPROVED BY BOARD  
ON 8/18/99  
led

Form Approved:

Jean Kradlman  
Assistant General Counsel

IT IS SO AGREED AND ORDERED:


By: Curt Fehn  
Curt Fehn  
Chief, South Site Branch  
Waste Management Division  
Region 4  
U. S. Environmental Protection Agency

9/1/99  
Date

BROWN'S DUMP

IT IS SO AGREED:

JEA

By: Walt Bussells  
CEO & Managing Director 8/31/99  
Date

Form Approved:

  
Assistant General Counsel

IT IS SO AGREED AND ORDERED:

By: Curt Fehn  
Chief, South Site Branch  
Waste Management Division  
Region 4  
U. S. Environmental Protection Agency 9/1/99  
Date